IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.7 OF 2006

IN

SUMMARY SUIT NO.3065 OF 2005

M/s.Plastika Enterprise. ...Plaintiff

vs.

Glow Sign Goa and another. ...Defendants.

Mr.S.P.Kanuga, for Plaintiff.

Mr.P.A.Sawant i/b. M/s.Khaitan & Jayakar, for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 8th June, 2006.

P.C.:-

1. The plaintiff has filed the suit for recovery of the price of the goods supplied by the plaintiff on the basis of the order placed by the defendants. The suit of the plaintiff is based on the invoices and delivery challan. The plaintiff has produced the invoices raised by the plaintiff against the

defendants for supply of goods and delivery challan signed by the defendants. The defence of the defendants is that the suit is not based on any written contract. Secondly, it is contended by the defendants that the defendants have not received any bills. Thirdly, according to the defendants, the suit is for recovery of the amount which is shown at the foot of the account and therefore, relying on the order passed by the Division Bench of this Court in the Appeal no.16 of 1953 dated 25.2.1953 “M/s.Hiranand Chaturmal Vs. Lachmandas Parasram” it is contended that the suit is not maintainable.

2. Now so far as the first defence of the defendants that the goods have not been received by the defendants is concerned the goods supplied by the plaintiff to the defendants pursuant to the six invoices are the subject matter of the suit. The numbers of those invoices are 235, 261, 270, 285, 302 and 726. Perusal of the letter dt. 28.3.2003 written by the defendants to the plaintiff which is produced by the defendants itself shows that the defendants were claiming concession in octroi from the plaintiff

in relation to the goods supplied by the following invoices viz. Invoice Nos.235, 261, 270, 285 and 302. It is clear that if the defendants had not received the goods supplied pursuant to those invoices there was no question of defendants claiming concession in relation to payment of octroi. It was submitted on behalf of the defendants that the payment which was made which is referred to in the letter dated 28.3.2003 was the payment towards the full and final settlement of all the invoices which are mentioned in the annexure to this letter. Thus, the submissions made on behalf of the defendants, in my opinion, itself shows that the defence put up by the defendants is false. If the defendants had not received the goods supplied under the invoice nos.235, 261, 270, 285 and 302, there was no question of the defendants making any payment either in full and final settlement or in part in relation to the goods. Then it was contended that the payment was made under a mistake and that the goods were not received relying on the letter dated 29.7.2003 written by the defendants to the plaintiff. Perusal of that letter shows that a grievance was made in

that letter that the plaintiff has charged the defendants extra charges for 10 rolls of Vinyl which has been billed to the defendants by mistake and supplied to Welpack Bangalore. But in that letter it is not claimed that though the bills were supplied by the plaintiff, the defendants have made payment and therefore, that payment either to be refunded or adjusted. The conduct of the defendants of not claiming either refund or adjustment belies the case of the defendants that the payment was made by mistake.

3. So far as the goods supplied under the invoice no.726 is concerned, the plaintiff in the Rejoinder has stated that the goods were supplied at the request of the defendants to M/s.Shreyas Digital Prints. The plaintiff has relied on the letter dated 27.8.2002 received in this regard by the plaintiff from the defendants. The plaintiff has filed the delivery challan which shows that the goods were duly received by M/s.Shreyas Digital Prints. The defendants have not filed any affidavit disputing that they had asked by letter dated 27.8.2002 that

the goods were to be delivered to other party and they have also not sought inspection of the document relied on by the plaintiff. It means that the defendants accept the authenticity of the document and do not dispute the position that they had asked the plaintiff to supply the goods to M/s.Shreyas Digital Prints. Thus, the plaintiff has established that the goods under the invoice no.726 were also duly supplied by the plaintiff. Now it is clear from the material on record that the goods were supplied under the invoices and they were duly received by the defendants. If that is so, it will bring about a written contract between the parties and the summary suit for recovery of the price of the goods delivered which remained unpaid is maintainable. So far as the reliance placed on the judgment of the Division Bench in the case “M/s.Hiranand Chaturmal Vs. Lachmandas Parasram” is concerned, it appears from the order that in that case in the plaint the plaintiff had claimed that his cause of action is based on the accounts maintained by the plaintiff. Perusal of the plaint in the present case shows that the plaintiff in paragraph 7 claims that his cause of action is

based on the written contract i.e. order, invoice and delivery challan. Merely because the plaintiff was maintaining accounts and in that accounts he has given credit to the defendants for the amount paid by them from time to time, does not convert the suit into a suit based on accounts. Thus, I find that none of the defence raised by the defendants have any force. The summons for judgment is therefore, deserves to be granted. It is accordingly, granted. The suit is therefore, decreed in terms of prayer clause (a). Refund of court fees as per rules.